

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Crl. A. No. S-2021-SB of 2014

DATE OF DECISION : 21.04.2018

Harjinder Singh @ Laddi

.... APPELLANT

Versus

State of Haryana

.... RESPONDENT

CORAM :- HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. H.S. Jalal, Legal Aid Counsel,
for the appellant.

Mr. Sidharth Sanwaria, DAG, Haryana.

* * *

AVNEESH JHINGAN, J.

The appellant had faced trial in FIR No. 541 dated 26.08.2012 registered at Police Station Sadar, Karnal, under Section 18/25 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (for short, 'the Act').

2. The learned Judge, Special Court (Narcotic Drugs & Psychotropic Substances Act, 1985), Karnal, vide judgment dated 30.01.2014, convicted the appellant for commission of an offence punishable under Section 18 (b) of the Act. Vide order of even date, he was sentenced to undergo rigorous imprisonment for 10 years and to pay fine of ₹ 1,00,000/-, and in case of default of payment of fine, to further undergo simple imprisonment for six months.

3. The brief facts of the case are that on 26.08.2012, ASI Narain

Dass along with other police officials was present on Kaithal Road in Tata Sumo bearing registration No. HR 45A-8000. A secret information was received that the appellant was indulged in selling opium and he was going from Karnal to Assandh carrying opium in his car bearing registration No. HR 26W-8243. ASI tried to join two independent witnesses but they expressed their inability. A raiding party was formed and *Naka* was held. A Tata Indica car bearing registration No. HR 26W-8243 coming from Karnal side was stopped. On enquiry, the appellant disclosed his identity. In compliance of Section 50 of the Act, he was given an option of getting himself searched before a Gazetted Officer. He wanted his search to be conducted by a Gazetted Officer. By a VT message, DSP Rajesh Kumar Bhardwaj was called, on his directions, ASI conducted personal search of the appellant, nothing was recovered. During the search of the car, 3 Kgs. 640 grams opium was recovered from a white coloured bag. Two samples of 20 grams each were separated. Samples and the remaining contraband were sealed by putting seals of 'ND' and 'RK'. The sealed parcels along with car were taken into possession. Ruqa was sent to the police station, on the basis of which formal FIR was registered. The appellant along with case property and the witnesses was produced before Inspector/SHO Siri Dutt, who verified the facts of the case from witnesses and put his seal of 'SD' on the case property. The samples were sent to FSL, Madhuban for analysis.

4. Charge sheet was prepared and submitted before the court. The documents were supplied to the appellant. He was charge-sheeted for offence punishable under Section 18 of the Act. He pleaded not guilty.

5. After completion of evidence of the prosecution, Section 313 Cr.P.C. was complied with. The appellant denied allegations and pleaded false implication. No evidence was adduced.

6. After appreciating the evidence and considering the facts, the learned trial court vide impugned judgment and order convicted and sentenced the appellant, as stated above.

7. Aggrieved of the said judgment and order, the present appeal has been filed.

8. The learned Legal Aid Counsel appearing on behalf of the appellant argued that the prosecution failed to prove its case against the appellant beyond reasonable doubt. In spite of the fact that the checking was done during the day time, no independent witness was associated. He contended that there is non-compliance of Section 42 of the Act. The judgment of conviction and the order of sentence are liable to be set aside.

9. Learned State counsel argued that the prosecution had duly proved its case beyond reasonable doubt. He contended that the provisions of Section 42 of the Act have been complied with and the recovery of opium from the appellant has been proved. He produced custody certificate dated 23.03.2018 issued by the Deputy Superintendent, District Prison, Karnal. As per the said certificate, the appellant has undergone total sentence of 4 years 5 months and 13 days, including the earned remission of 6 months. The appellant was released on bail on 12.08.2016. After his release on bail, another FIR No. 683 dated 21.10.2016 under Section 18 of the Act was registered against him at Police Station Assandh, Karnal.

10. After hearing learned counsel for the parties and going through the record, the contentions raised by learned counsel for the appellant cannot be accepted.

11. The prosecution had proved its case beyond reasonable doubt. PW.2 ASI Vinod Kumar, PW.5 ASI Narain Dass (Investigating Officer) and PW.7 DSP Rajesh Kumar Bhardwaj in their depositions consistently supported the case of the prosecution. They stated that on 26.08.2012, ASI Narain Dass along with ASI Vinod Kumar, HC Dashrath Singh, Constables Bhalle Ram and Vinod Kumar were on patrol duty in a Tata Sumo. On receiving a secret information, *Nakabandi* was done. A Tata India car bearing registration No. HR 26W-8243 was stopped. The driver disclosed his identity as Harjinder Singh alias Laddi son of Mahal Singh. The search was conducted, after compliance of Section 50 of the Act. As the appellant intended that search be conducted before a Gazetted Officer, DSP Rajesh Kumar Bhardwaj reached the spot after receiving a VT message. From the search of the car, 3 Kgs. 640 grams of opium was recovered from the front left side of the seat. Two samples of 20 grams each were separated. The samples and the contraband were sealed and seal of 'ND' was affixed. Seal of the DSP was also affixed. The seal was handed over to HC Vinod Kumar. Sealed parcels and the car were taken in possession vide memo Ex.P3. It was signed by HC Vinod Kumar and HC Dashrath Singh and attested by DSP Rajesh Kumar Bhardwaj. The Investigating Officer deposed that ruqa Ex.P5 was sent to the police station and FIR Ex.P6 was registered. On

return to police station, the accused, the case property and the witnesses were produced before PW.4 Inspector/SHO Siri Dutt who after verifying the facts from the appellant and the witnesses affixed his seal of 'SD' on each parcel. A special report Ex.P5 was prepared and sent to DSP, Karnal. The case property was deposited with Moharir Head Constable. It was stated that on the next day, the accused, case property, report under Section 52-A of the Act and the inventory were produced before the Area Magistrate. The Magistrate verified the facts, checked the seals and issued certificate Ex.P12. The appellant was photographed before the Magistrate. One sample each was deposited in Judicial Malkhana and with the Moharir Head Constable, Police Station Sadar, Karnal. The depositions proved the sending of sample to FSL, Madhuban on 30.08.2012. The prosecution witnesses firmly stood the test of cross-examination and their testimony remained un rebutted.

12. The witnesses proved the recovery of contraband from possession of the appellant. There was due compliance of Sections 50, 52, 55 and 57 of the Act. The FSL report Ex.PX exhibited before the trial court proved that the recovered contraband was opium having 3.2% Morphine. From the deposition of witnesses and the FSL report, it is proved that the sample parcels were intact and had three seals of 'ND', 'RK' and 'SD'.

13. The contention of learned counsel for the appellant that the prosecution failed to prove its case beyond reasonable doubt as there was no independent witness does not cause any dent on the case of the prosecution.

There is no infirmity pointed out in the statements of the official witnesses. No animosity has been alleged much less proved against the police officials or the witnesses. The police personnel were discharging their duties in due course. In such cases, the independent witnesses hardly come forward. The Investigating Officer tried to associate two independent witnesses but they refused. No doubt, it is desirable that there should be independent witnesses but merely their absence will not mean that the statements of the police officials, which otherwise are found reliable, would be ignored. Moreover, no prejudice has been caused to the appellant as there was due compliance of Sections 52, 55 and 57 of the Act. Reliance is placed upon decision of the Supreme Court in Major Singh Versus State of Punjab, 2010 (9) SCC 608, wherein it was held as under :-

“16. Pandit Katara had further submitted that no independent witness of search and seizure had been examined and on this ground alone the search and seizure is rendered illegal. He submits that rigours of Section 100 of the Code of Criminal Procedure are applicable and there being no independent witness, the case of the prosecution deserves to be rejected. We do not find any substance in the submission of Mr. Katara. The case of the prosecution cannot be rejected only on the ground that independent witnesses have not been examined, in case on appraisal of the evidence on record the court finds the case of prosecution to be trustworthy. It has come in the evidence of the prosecution

witnesses that an attempt was made to join person from public at the time of search but none was available. In the face of it mere absence of independent witness at the time of search and seizure will not render the case of the prosecution unreliable.”

Further, in **Ram Swaroop Versus State (Govt. NCT) of Delhi, 2013 (14)**

SCC 235, the Supreme Court observed as follows :-

*“7. To appreciate the first limb of submission, we have carefully scrutinised the evidence brought on record and perused the judgment of the High Court and that of the trial Court. It is noticeable that the evidence of PW-7, namely, Ritesh Kumar, has been supported by Balwant Singh, PW-5, as well as other witnesses. It has come in the evidence of Ritesh Kumar that he had asked the passerby to be witnesses but none of them agreed and left without disclosing their names and addresses. On a careful perusal of their version we do not notice anything by which their evidence can be treated to be untrustworthy. On the contrary it is absolutely unimpeachable. We may note here with profit there is no absolute rule that police officers cannot be cited as witnesses and their depositions should be treated with suspect. In this context we may refer with profit to the dictum in **State of U.P. v. Anil Singh, 1990 (3) R.C.R (Criminal) 585 : 1988 Supp SCC 686**, wherein this Court took note of the fact that generally the public at large are reluctant to*

come forward to depose before the court and, therefore, the prosecution case cannot be doubted for non-examining the independent witnesses.”

14. The argument of learned counsel for the appellant that there is non-compliance of Section 42 of the Act is not well founded. Under the Act, a balance has to be struck between the compliance of the provision and enforcement of such law. By the checks provided under Sections 42, 50, 52 and 57 of the Act, a protection has been extended to the citizens so that the provisions are not used for oppression. With the changing times, always a balance has to be struck between the object of protection of citizens and enforcement of the Act. The Constitution Bench of the Supreme Court in the case of **Karnail Singh Versus State of Haryana, 2009 (8) SCC 539**, held as under :-

“17. In conclusion, what is to be noticed is Abdul Rashid did not require literal compliance with the requirements of Sections 42(1) and 42(2) nor did Sajan Abraham hold that the requirements of Section 42(1) and 42(2) need not be fulfilled at all. The effect of the two decisions was as follows :

(a) The officer on receiving the information (of the nature referred to in Sub-section (1) of section 42) from any person had to record it in writing in the concerned Register and forthwith send a copy to his immediate official superior, before proceeding to take action in terms of clauses (a) to (d) of section 42(1).

(b) But if the information was received when the officer was not in the police station, but while he was on the move either on patrol duty or otherwise, either by mobile phone, or other means, and the information calls for immediate action and any delay would have resulted in the goods or evidence being removed or destroyed, it would not be feasible or practical to take down in writing the information given to him, in such a situation, he could take action as per clauses (a) to (d) of section 42(1) and thereafter, as soon as it is practical, record the information in writing and forthwith inform the same to the official superior .

(c) In other words, the compliance with the requirements of Sections 42 (1) and 42(2) in regard to writing down the information received and sending a copy thereof to the superior officer, should normally precede the entry, search and seizure by the officer. But in special circumstances involving emergent situations, the recording of the information in writing and sending a copy thereof to the official superior may get postponed by a reasonable period, that is after the search, entry and seizure. The question is one of urgency and expediency.

(d) While total non-compliance of requirements of sub-sections (1) and (2) of

section 42 is impermissible, delayed compliance with satisfactory explanation about the delay will be acceptable compliance of section 42. To illustrate, if any delay may result in the accused escaping or the goods or evidence being destroyed or removed, not recording in writing the information received, before initiating action, or non-sending a copy of such information to the official superior forthwith, may not be treated as violation of Section 42. But if the information was received when the police officer was in the police station with sufficient time to take action, and if the police officer fails to record in writing the information received, or fails to send a copy thereof, to the official superior, then it will be a suspicious circumstance being a clear violation of Section 42 of the Act. Similarly, where the police officer does not record the information at all, and does not inform the official superior at all, then also it will be a clear violation of Section 42 of the Act. Whether there is adequate or substantial compliance with Section 42 or not, is a question of fact to be decided in each case. The above position got strengthened with the amendment to Section 42 by Act 9 of 2001.”

15. Total non-compliance of the provisions of Section 42 of the Act is impermissible. There can be a delay in compliance which could be explained. The substantial compliance of provision of Section 42 of the Act would be sufficient. Whether there is adequate or substantial compliance of Section 42 is a question of fact to be decided in each case. In case in hand, secret information was received while the police party was on patrol duty. After apprehending the appellant and conducting the search after compliance of Section 50 of the Act, on the same very day, i.e. 26.08.2012, ASI Narain Dass apart from ruqa, sent a report Ex.P5 to the Inspector/SHO, Police Station Sadar, Karnal. On the said report, the Inspector/SHO prepared his report and forwarded the same to DSP, Karnal. It was not a case of mere registering the FIR and communicating it to higher authorities but the report was made by the Investigating Officer to Inspector/SHO of the concerned police station which was further sent to DSP. It cannot be argued that it was a case where no information at all was recorded. It would be important to note at this stage that the report sent by ASI Narain Dass contained the details of the secret information received, on the basis of which the *naka* was set up and the appellant was apprehended. There is substantial compliance of Section 42 of the Act. Supreme Court has held that non-compliance of Section 42 may not vitiate the trial itself, if it does not cause any prejudice to the accused. No such prejudice is shown to have been caused to the appellant. The evidence produced by the prosecution and the compliance of various provisions of the Act proves the case of the prosecution and it is ensured that no prejudice is caused to the appellant.

16. The impugned judgment of conviction and the order of sentence passed by the learned trial court are upheld.
17. Appeal is dismissed.
18. Sentence of the appellant was suspended by this Court vide order dated 10.08.2016 and he was released on bail during the pendency of the appeal. As appellant is on bail, his bail/surety bonds stand cancelled. He is directed to surrender himself before the jail authorities immediately for completing remaining sentence, failing which the concerned authority shall proceed against him in accordance with law.

April 21, 2018
ndj

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes